IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

WP(C).No. 28913 of 2007(S)

PETITIONER:

P.OMANA AMMA, W/O.LATE V.APPU KURUP (PRE - 1986 COMBINED SERVICES PENSIONER) PUTHAN PURAYIL HOUSE, P.O.CHAMPAD, (VIA), TELLICHERRY CANNANORE DIST.KERALA- 670 694.(REP. BY THE POWER OF ATTORNEY HOLDER P.A.SADASIVAN S/O.LATE V.APPU KURUP, R/AT PUTHAN PURAYIL HOUSE, P.O.CHAMPAD(VIA)

BY SMT.P.OMANA AMMA (PARTY-IN-PERSON)
REP.BY SRI.P.A.SADASIVAN(POWER OF ATTORNEY FOR THE PETITIONER)

RESPONDENTS:
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1. **DIRECTOR OF ACCOUNTS (POSTAL), TAMILNADU POSTAL CIRCLE, CHENNAI - 600 008.**

2. **SENIOR SUPERINTENDENT OF POST OFFICES, CHENNAI CITY CENTRAL DIVISION, CHENNAI - 600 017.**

3. **CHIEF POST MASTER GENERAL, TAMILNADU POSTAL CIRCLE, CHENNAI - 600 002.**

4. **SECRETARY TO GOVERNMENT OF INDIA, DEPARTMENT OF POSTS, MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY, DAK BHAVAN, NEW DELHI - 100 001.**

5. **SECRETARY TO GOVERNMENT OF INDIA, DEPARTMENT OF PENSION AND PENSIONERS WELFARE, MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND**

PENSIONS, LOK NAYAK BHAVAN, NEW DELHI - 110 003.

BY ADV. SRI.P.PARAMESSWARAN NAIR, ASST.SG

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR &
T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C) NO. 28913 OF 2007-S

Dated 28th September, 2007.

JUDGMENT

Balakrishnan Nair, J.

The widow of a pensioner is the writ petitioner. The pensioner, late V.Appu Kurup worked in the Armed Forces for some time and thereafter he joined the Postal Department on 18.4.1956. He retired on 31.01.1984, on superannuation. He was granted pension, reckoning his military service also. He died on 20.02.2001. Thereafter, the petitioner came to know of the O.M.No.3/13/89-P.II dated 22.01.1991, permitting re-fixation of pay of all pre-1986 combined services pensioners. The petitioner represented that the pay of her husband may be re-fixed in the light of that O.M and correspondingly the terminal benefits may be revised, including family pension. But, her representations were rejected. So, she filed O.A.No.836/2003 before the Central Administrative Tribunal, Ernakulam Bench, claiming re-fixation of pay of her husband, based on the aforesaid O.M and consequential re-fixation of the family pension payable to her. The said O.A was dismissed by the Tribunal, by Ext.P15 order dated 16.10.2003, on the ground that the same is barred by limitation. The

petitioner thereafter filed a few representations before the authorities, which did not yield any results. So, again she filed O.A.No.834/2006, claiming substantially the very same reliefs sought earlier. The said application was resisted by the respondents, pointing out the bar of limitation as well as res judicata. On merits also, they resisted the application. The Tribunal considered the claim and dismissed the O.A by Ext.P19 order dated 29.6.2007, holding that the claim is barred by limitation. It was also held that on merits also the petitioner does not have a case. The petitioner attempted a review petition. That R.P was dismissed by Ext.P21 order dated 9.8.2007. Now, this writ petition is filed, challenging Exts.P19 and P21.

2. We heard Mr.P.A.Sadasivan, the son and Power of Attorney holder of the petitioner. He submitted that he has explained the reason for the delay in moving the Central Administrative Tribunal, in Ext.P12 O.A. It is also submitted that the competent authority should have revised the basic pay and consequently revised the pension also, in the light of the aforementioned O.M., in 1991, even without any motion from the side of the beneficiary. The Tribunal failed to appreciate the above aspects, it is submitted.

3. We notice that the claim raised in O.A. 834/2006 is substantially

the same claim raised in the earlier O.A., which was dismissed by Ext.P15 order. So, the second O.A., claiming practically the very same reliefs, is not maintainable in law. Further, the view taken by the Tribunal that the claim is barred by limitation is certainly a plausible view, having regard to the facts of the case. The O.M mentioned above was published in 1991. The petitioner's husband was alive for about 10 years and only after his death, for the first time, the petitioner chose to represent. So, the stand of the Tribunal that the claim of the petitioner is barred by limitation, cannot be said to be perverse, warranting interference by this Court.

In view of the above two grounds, it is unnecessary for this Court to consider the claim of the petitioner on merits, Accordingly, the writ petition fails and it is dismissed.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Nm/